

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AMERICA CABALLERO,

Plaintiff,

v.

FIDELITONE LAST MILE, INC.,

Defendant.

Case No. 20-cv-06281-VC

**ORDER GRANTING MOTION TO
REMAND**

Re: Dkt. No. 17

Caballero's motion to remand is granted. Fidelitone has failed to show by a preponderance of the evidence that the amount in controversy exceeds \$75,000. *See Dart Cherokee Basin Operating Co., LLC v. Owens.*, 574 U.S. 81, 88-89 (2014). Fidelitone's calculation of attorney's fees fails to account for the fact that, for purposes of determining the amount in controversy in class action cases, attorney's fees must be calculated on a pro-rata basis. *See Canela v. Costco Wholesale Corp.*, 971 F.3d 845, 849-850 (9th Cir. 2020); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 942-43 (9th Cir. 2001). And Fidelitone's bare assertion that Caballero's reimbursement claim pushes the amount in controversy over the \$75,000 threshold because, in addition to the cost of Caballero's truck and property damage, "the cost of the equipment, payroll fees and uniforms would amount to thousands of dollars" is insufficient to meet its burden. The clerk is thus directed to remand this case to Alameda County Superior Court.

IT IS SO ORDERED.

Dated: December 15, 2020



VINCE CHHABRIA
United States District Judge